



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of C.V., Police Officer  
(S9999A), City of Vineland

CSC Docket No. 2021-138

Medical Review Panel Appeal

**ISSUED: MAY 24, 2021 (BS)**

C.V., represented by Robert K. Chewning, Esq., appeals his rejection as a Police Officer candidate by the City of Vineland and its request to remove his name from the eligible list for Police Officer (S9999A) on the basis of psychological unfitness to perform effectively the duties of the position.

This appeal was brought before the Medical Review Panel (Panel) on February 19, 2021, which rendered its Report and Recommendation on February 21, 2021. Exceptions were filed on behalf of the appointing authority, and cross exceptions were filed on behalf of the appellant.

The report by the Panel discusses all submitted evaluations. It notes that Dr. Sandra Ackerman Sinclair of the Institute for Forensic Psychology (IFP), evaluator on behalf of the appointing authority, conducted a psychological evaluation of the appellant and characterized the appellant as presenting with serious concerns in the areas of impulsivity and hostility. Dr. Sinclair indicated that the appellant's employment record included two written warnings, including one for "unprofessional demeanor" when he reacted disrespectfully to a superior. The other involved poor performance after the appellant made an error which cost the company money. Dr. Sinclair also noted that, as a juvenile, the appellant pulled a knife on his sister in 2011 and police had to be called. He continued to demonstrate defiant behavior through his high school years which, according to Dr. Sinclair, he shrugged off as due to "senioritis." Moreover, Dr. Sinclair found that, in 2019, the appellant accrued two speeding tickets, which she found to have supported the

concerns regarding the appellant's impulsivity. Furthermore, Dr. Sinclair reported that the appellant was medicated for Attention Deficit Hyperactivity Disorder (ADHD) from 2001 to 2012. After being off the medication for eight years, Dr. Sinclair stated that the appellant recently sought support for attention/concentration issues and started a new medication. Dr. Sinclair opined that the appellant had yet to demonstrate stability on his new medication nor demonstrate that it had adequately addressed his issues with hostility and attention. In that regard, Dr. Sinclair noted that the appellant spoke of having difficulty maintaining his patience and that he believed that people found him "unapproachable." With regard to the test data, Dr. Sinclair reported that the appellant had elevations on several scores, which were an indication of someone who is currently depressed or had a history of depression and, therefore, can become depressed again. The appellant's test results on the Personality Assessment Inventory also revealed that he is at "high risk" for having job performance as well as anger management problems. Therefore, based on her assessment, Dr. Sinclair did not recommend the appellant for appointment to the subject position.

Dr. Robert Kanen, evaluator on behalf of the appellant, carried out a psychological evaluation and noted that the appellant had no indications or evidence of a psychological problem which would interfere with his ability to serve in a law enforcement capacity. Dr. Kanen found that the appellant had the necessary cognitive ability to function in the job. He had no history of arrests, DWI, or substance abuse issues. Additionally, the appellant had a stable work history and had never been terminated from a position. Dr. Kanen indicated that, on personality testing, the appellant fell within normal ranges. Although his scores were elevated on risk taking tendencies and depression, Dr. Kanen indicated that there was no evidence in the appellant's social history that he either engaged in risk taking behaviors or that he had been depressed. Moreover, Dr. Kanen found no evidence of ADHD at this time. Regarding the incident with the appellant's sister, Dr. Kanen noted that this was an isolated incident when the appellant was 11 years old and appeared to have no bearing on the appellant's functioning as an adult. Dr. Kanen opined, within a reasonable degree of psychological certainty, that the appellant was psychologically suitable for employment as a Police Officer.

The evaluators on behalf of the appellant and the appointing authority arrived at differing conclusions and recommendations. In that regard, the Panel noted Dr. Sinclair's concerns about the appellant with regard to impulsivity, hostility, depression, anxiety, and somatic complaints as factors in not recommending him for appointment. However, Dr. Kanen concluded that the appellant was free from psychopathology and personality problems. Although Dr. Kanen conceded that some of the psychological testing administered was consistent with an individual that was not likely to be recommended for the position, Dr. Kanen did not see the behavioral history as consistent with the testing results. Likewise, the Panel did not see a pattern of hostility or antisocial acts. The only incident in this area

occurred when the appellant was 11 years old, and no such pattern was present. Regarding impulsivity, the Panel did not view the appellant's two recent speeding tickets as indicative of a pattern of impulsive behavior and there were no other indications of impulsive behavior in the record. The Panel found that the appellant's relatively minor issues in high school regarding tardiness did not translate into work-related problems as an adult. The appellant had been written up twice at work for violations and there were no other incidents. These issues were not pervasive, and he continues to effectively produce work for his employers. The Panel indicated that the appellant has done similar work for the company for some time and the problem has not been repeated. The Panel noted the appellant's longstanding ADHD diagnosis, which is largely in the attentional domain and related to paperwork. His symptoms in that regard were not pervasive, nor have they led to any work-related problems as he continues to produce paperwork for his employer. The Panel found that the appellant was in treatment and that treatment was not likely to impair his performance. Therefore, the Panel concluded that the test results and procedures and the behavioral record, when viewed in light of the Job Specification for Police Officer, indicated that the candidate is mentally fit to perform effectively the duties of the position sought, and therefore, the action of the appointing authority should not be upheld. Accordingly, the Panel recommended that the applicant be restored to the subject eligible list.

In its exceptions, the appointing authority, represented by Michael E. Benson, Esq., asserts that the findings of Drs. Sinclair and Kanen arrived at consistent findings of the appellant's high risk of being found poorly suited for law enforcement work by psychologists who specialize in public safety work. However, Dr. Sinclair found no inconsistencies between her objective and the subjective personal information/history gleaned from the appellant while Dr. Kanen, on the other hand, appeared to accept only the subjective suggestions and impressions he derived from the appellant's interview and history. The appointing authority maintains that the knife incident involving the appellant's sister and the appellant's admissions that he had a "bad temper" and that when he is "really mad," people "give him his space" "flies in the face" of Dr. Kanen's assessment that the appellant had no history of temper control problems. The appointing authority further asserts that the appellant only resumed taking medication for his ADHD only in anticipation of doing police work, recognizing that he still has attention issues. The appointing authority disagrees with the Panel's and Dr. Kanen's assessment that the appellant no longer has attention issues. In support of its exceptions, the appointing authority presents comments provided by Dr. Matthew Guller of IFP. Dr. Guller states that "psychologists are aware that many aspects of temperament in childhood endure into adulthood." He recounts the appellant's behavioral history as set forth by Dr. Sinclair. Dr. Guller maintains that when the appellant's issues are reviewed in isolation, they may not raise serious concerns but "collectively raise significant concerns." The appointing authority contends that the appellant is a psychological liability as demonstrated by the objective testing of both Drs. Sinclair and Kanen

and that the Report and Recommendation of the Panel should be set aside. Thus, it requests that the appellant's removal from the subject eligible list be upheld.

In his cross exceptions, the appellant asserts that the Panel's recommended decision was based on its careful consideration of the psychological reports and the appellant's presentation at the Panel meeting. The appellant contends that, in its exceptions, the appointing authority fails to present facts or a legal basis which the Panel failed to consider or interpreted incorrectly. The appointing authority used its exceptions to re-argue what Dr. Sinclair found and concluded in her report for the appointing authority. Both the Panel and Dr. Kanen determined that Dr. Sinclair's test results were not supported by the appellant's actual behavioral history. The appellant asserts that, aside from the incident which occurred when he was 11 years old, which was an isolated incident, Dr. Kanen found no evidence of temper control issues. With regard to his ADHD, the appellant argues that his symptoms are not pervasive, which mostly occur while performing paperwork, and do not lead to work-related problems. The appellant maintains that he has never been terminated from a position, he has never been arrested or criminally charged, he has never used drugs or has been in alcohol treatment, nor has he ever had his driver's license revoked. The appellant emphasizes that Dr. Kanen found him to be reliable, dependable, and showed no evidence of anti-social tendencies. Further, Dr. Kanen's testing revealed that the appellant had the cognitive ability to perform the duties of the position, and that he appeared to honest and candid while providing his responses. Therefore, the appellant respectfully requests that the Panel's Report and Recommendation be affirmed and that his name be restored to the subject eligible list.

## CONCLUSION

The Job Specification for the title of Police Officer is the official job description for such municipal positions within the Civil Service system. The specification lists examples of work and the knowledge, skills and abilities necessary to perform the job. Examples include the ability to find practical ways of dealing with a problem, the ability to effectively use services and equipment, the ability to follow rules, the ability to put up with and handle abuse from a person or group, the ability to take the lead or take charge, knowledge of traffic laws and ordinances, and a willingness to take proper action in preventing potential accidents from occurring.

Police Officers are responsible for their lives, the lives of other officers and the public. In addition, they are entrusted with lethal weapons and are in daily contact with the public. They use and maintain expensive equipment and vehicle(s) and must be able to drive safely as they often transport suspects, witnesses and other officers. A Police Officer performs searches of suspects and crime scenes and is responsible for recording all details associated with such searches. A Police Officer must be capable of responding effectively to a suicidal or homicidal situation or an

abusive crowd. The job also involves the performance of routine tasks such as logging calls, recording information, labeling evidence, maintaining surveillance, patrolling assigned areas, performing inventories, maintaining uniforms and cleaning weapons.

The Civil Service Commission (Commission) has reviewed the Report and Recommendation of the Panel. The Commission notes that the Panel conducts an independent review of the raw data presented by the parties as well as the recommendations and conclusions drawn by the various evaluators and that, in addition to the Panel's own review of the results of the tests administered to the appellant, it also assesses the appellant's presentation before it prior to rendering its own conclusions and recommendations which are based firmly on the totality of the record presented. In the instant matter, the Commission finds the exceptions presented by the appointing authority not to be persuasive. In this regard, the Commission emphasizes that its Panel of qualified and licensed psychologists and psychiatrist have already reviewed the raw test data, reports and opinions of Dr. Sinclair, as well as that of Dr. Kanen, and rendered its own expert opinion in this matter. The Commission defers to and agrees with the expert opinion of its Panel. The Commission finds nothing in the appellant's behavioral record that is so egregious it would warrant his removal from consideration from serving in the subject title. Further, the Commission is mindful that any potential behavioral or performance issues regarding the appellant's employment can be addressed during the working test period.

Therefore, having considered the record and the Panel's Report and Recommendation issued thereon, and having made an independent evaluation of same, the Commission accepts and adopts the findings and conclusions as contained in the Panel's Report and Recommendation.

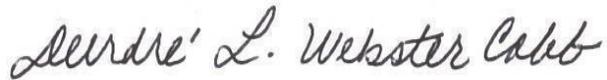
### **ORDER**

The Commission finds that the appointing authority has not met its burden of proof that C.V. is psychologically unfit to perform effectively the duties of a Police Officer and, therefore, the Commission orders that his name be restored to the subject eligible list. Absent any disqualification issue ascertained through an updated background check conducted after a conditional offer of appointment, the appellant's appointment is otherwise mandated. A federal law, the Americans With Disabilities Act (ADA), 42 U.S.C.A. §12112(d)(3), expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. *See also* the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examination* (October 10, 1995). That offer having been made, it is clear that, absent the erroneous disqualification, the aggrieved individual would have been employed in the position.

Since the appointing authority has not supported its burden of proof, upon the successful completion of his working test period, the Commission orders that appellant be granted a retroactive date of appointment to July 26, 2020, the date he would have been appointed if his name had not been removed from the subject eligible list. This date is for salary step placement and seniority-based purposes only. However, the Commission does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 19<sup>TH</sup> DAY OF MAY, 2021



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